

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JAMES DRISCOLL SMITH,

Plaintiff,

v.

DR. VACHAROTHONE, *et al.*,

Defendants.

Case No. 3:23-cv-00226-MMD-CSD

ORDER

I. SUMMARY

Plaintiff James Driscoll Smith brings this civil rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Elko County Detention Center. (ECF No. 6.) On November 1, 2023, this Court ordered Smith to file an amended complaint by December 1, 2023. (ECF No. 5.) The Court warned Smith that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.* at 6-7.) That deadline expired and Smith did not file an amended complaint, move for an extension, or otherwise respond.

II. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s

1 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
2 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
3 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
4 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
5 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

6 The first two factors—the public's interest in expeditiously resolving this litigation
7 and the Court's interest in managing its docket—weigh in favor of dismissal of Smith's
8 claims. The third factor—risk of prejudice to defendants—also weighs in favor of dismissal
9 because a presumption of injury arises from the occurrence of unreasonable delay in filing
10 a pleading ordered by the Court or prosecuting an action. *See Anderson v. Air West*, 542
11 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
12 cases on their merits—is greatly outweighed by the factors favoring dismissal.

13 The fifth factor requires the Court to consider whether less drastic alternatives can
14 be used to correct the party's failure which brought about the Court's need to consider
15 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
16 that considering less drastic alternatives *before* the party has disobeyed a court order
17 does not satisfy this factor); *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002)
18 (explaining that “the persuasive force of” earlier Ninth Circuit cases that “implicitly
19 accepted pursuit of less drastic alternatives prior to disobedience of the court's order as
20 satisfying this element[,]” such as the “initial granting of leave to amend coupled with the
21 warning of dismissal for failure to comply[,]” has been “eroded” by *Yourish*). Courts “need
22 not exhaust every sanction short of dismissal before finally dismissing a case, but must
23 explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421,
24 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and unless
25 Smith files an amended complaint, the only alternative is to enter a second order setting
26 another deadline. But the reality of repeating an ignored order is that it often only delays
27 the inevitable and squanders the Court's finite resources. The circumstances here do not
28 indicate that this case will be an exception: There is no hint that Smith needs additional

1 time or evidence that he did not receive the Court's screening order. Setting another
2 deadline is not a meaningful alternative given these circumstances. So the fifth factor
3 favors dismissal.

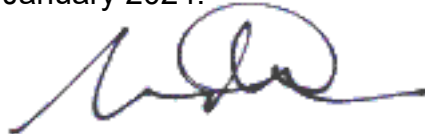
4 **III. CONCLUSION**

5 Having thoroughly considered these dismissal factors, the Court finds that they
6 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
7 prejudice based on Smith's failure to file an amended complaint in compliance with this
8 Court's November 1, 2023 order.

9 The Clerk of Court is further directed to enter judgment accordingly and close this
10 case. No other documents may be filed in this now-closed case. If Smith wishes to pursue
11 his claims, he must file a complaint in a new case.

12 It is further ordered that Plaintiff's application to proceed *in forma pauperis* (ECF
13 No. 1) is denied as moot.

14 DATED THIS 11th Day of January 2024.

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17 MIRANDA M. DU
18 CHIEF UNITED STATES DISTRICT JUDGE
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